

FITZGERALD v Limerick

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O'Higgins C.J.
Henchy J.
Griffin J.

THE SUPREME COURT

1983 No. 306

MICHAEL FITZGERALD

v.

LIMERICK CORPORATION

Judgment of Henchy J.
delivered the 7 June 1984

New - list.



This is the first case stated under s. 18 of the Malicious Injury Act, 1981, to come before this Court. It raises the question whether a person whose motor vehicle has been unauthorisedly taken, and has then been crashed while being driven, can recover compensation under the 1981 Act for malicious damage to the vehicle. Considering how prevalent this kind of "joyriding" offence is, the point is of considerable practical importance.

The applicant's motor car was parked on the roadway outside his house in Limerick City on the night of the 18 February 1982, when it was driven away without his permission by some person unknown. The car was later found, abandoned and crashed, in the garden of a house in another part of Limerick City. It was stuck up against the gable-end of a house. Part of the garden wall, which is near a

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right-hand bend in the road, had been demolished. The chassis of the car was bent and the car seemed to be unrepairable. The radiator was smashed. The evidence was that the severe impact which caused this extensive damage to the car was consistent with a head-on collision with a gate pier.

In the malicious injury claim brought by the applicant in the Circuit Court, it was necessary for him to show (under s. 5(2)(d) of the 1981 Act) that the damage to the car was caused "in the course of, whether or not for the purpose of, the committing of a crime against the property damaged". The Circuit Court Judge held that the damage was so caused. He made an award to the applicant of £600 compensation against Limerick Corporation. In this case stated the Judge seeks a ruling from this Court as to whether he was correct in so deciding.

There is no doubt that the person who without authority drove the car away from where it was parked committed a crime. He was guilty either of larceny of the car or of an offence under s. 112(1) of the Road Traffic Act, 1961 (as amended by s. 65 of the Road Traffic Act, 1968), which makes it an offence to "use or take possession of a mechanically propelled vehicle without the consent

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of the owner thereof or other lawful authority". In the absence of evidence of an intention, at the time of the taking, of permanently depriving the owner of the car, it would not be possible to prove larceny. But there was clear evidence of an offence under s. 112(1) (a). The person who without authority took the car took possession of it contrary to s. 112(1) (a). And the person who was driving the car when it crashed (whether he was the same person who had taken the car or not) was then using it contrary to s. 112(1) (a).

The offence under s. 112(1) (a) of taking possession of the car was not a continuing offence. As an offence, it was completed when the offender took control of the vehicle and drove off. From then until the crash, the driver was committing an offence contrary to s. 112(1) (a) by using the car without the owner's consent. That was a continuing offence. It was in the course of that continuing offence that the car was crashed.

The question then is whether (in the words of s. 5(2) (d) of the 1981 Act) the offence was "a crime against the property damaged." The reference there to a crime against property connotes an offence which causes damage to corporeal property. S. 5(1)

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creates a general right to recover compensation under the Act when damage, the aggregate amount of which exceeds one hundred pounds, is "maliciously caused to property". S. 5(2) is for the purpose of giving an extended meaning to "maliciously", as that word is used in s. 5(1). I am of the opinion that when - as is the case here - the damage was caused in the course of using the car contrary to s. 112(1)(a) of the Road Traffic Act, 1961, the damage was caused "in the course of the committing of a crime against the property damaged". I therefore consider that the applicant was correctly held to be entitled to an award of compensation.

I would answer the questions in the case stated as follows:

1. Using or taking possession of a mechanically propelled vehicle without the consent of the owner or other lawful authority, contrary to s. 112(1)(a) of the Road Traffic Act, 1961, is a crime against the property damaged for the purpose of s. 5(2)(d) of the Malicious Injuries Act when, in the course of the using or taking possession, the vehicle is damaged.
2. On the basis of the facts in the case stated, it was correctly decided that the applicant's property was damaged in the course of the committing of a crime against the property damaged,

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within the meaning of s. 5(2)(d) of the Malicious Injuries

Act, 1981.

Approved.
S.H.